IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1244 of 1999

with

CIVIL REVISION APPLICATION No 1580 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KIRAN S PARIKH

Versus

RUXMANIBEN NAGINDAS PANCHAL

Appearance:

1. Civil Revision Application No. 1244 of 1999
   MR JB PARDIWALA for the Petitioner
   MR AVINASH K MANKAD for Respondents Nos. 1-4
2. Civil Revision Application No. 1580 of 1999
   MR AVINASH K MANKAD for Petitioners
   MR JB PARDIWALA for Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/08/2002

ORAL JUDGEMENT

Heard the learned advocates.

Feeling aggrieved by the judgment and order dated 21st June, 1999 passed by the learned Additional Assistant Judge, Valsad in Regular Civil Appeal No.102/94 the defendant has preferred the above Civil Revision Application No.1244/1999 and the plaintiffs have preferred the above Civil Revision Application No.1580/1999 under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act').

The petitioners in Civil Revision Application No.1580/1999 are the landlords. The said petitioners (hereinafter referred to as 'the plaintiffs') instituted Regular Civil Suit No.74/1989 in the Court of 2nd Jt.Civil Judge (J.D.), Valsad for recovery of possession of the demised premises (hereinafter referred to as 'the suit premises') from the tenant (hereinafter referred to as 'the defendant').

The suit premises is the part of the first floor of a residential house belonging to the plaintiffs. The suit premises has been let to the defendant for a monthly rent of Rs.200=00 for the purpose of running a clinic since the year 1979. The plaintiffs sought possession of the suit premises on the grounds that the plaintiffs require the suit premises for their bonafide personal use; that the defendant had made material alterations in the suit premises without the permission of the plaintiffs and that the activities of the defendant caused nuisance and annoyance to the plaintiffs. Neither of the said grounds found favour with the learned trial Judge. The learned trial Judge was, under his judgment and order dated 18th August, 1994, pleased to dismiss the suit. Feeling aggrieved, the plaintiffs preferred above referred Regular Civil Appeal No.102/1994 in the Court of Additional Assistant Judge, Valsad. In the said appeal, the plaintiffs pressed the ground of bonafide personal requirement alone. The learned Judge was of the opinion that for the purposes of privacy and convenience of the plaintiffs a partial decree could be passed. Accordingly the suit was partially decreed. A decree has been passed against the defendant in respect of a strip 3 feet wide so as to enable the plaintiffs to use staircase situated in the front of the said building.

Mr.Pardiwala has submitted that having opined that the plaintiffs did not require the suit premises for their bonafide personal requirement, the Court below could not have passed a partial decree as has been done in the present case. He has submitted that the question of passing a partial decree would arise only in a case when the court believes the plaintiffs' case for bonafide personal requirement, but with a view to avoiding hardship to the tenant the Court is of the opinion that such a decree could be passed without causing hardship either to the landlord or the tenant. In the present case, neither of the Courts below has believed the plaintiffs' case for bonafide personal requirement. Hence, the question of examining the hardship either to the plaintiffs or to the defendant would not arise nor the question of passing partial decree would arise. In support of his argument Mr.Pardiwala has read over the impugned judgment of the Court below, particularly paragraphs 11, 12 and 13 thereof. Mr.Pardiwala has also relied upon the judgments in the matters of PARSOTTAMDAS KHEMCHANDDAS PATEL V/S. SMT. PRABHUTA PANCHOLI [1983 G.L.H. (U.J.) 71], of PANCHAL SHANKERLAL MATHURDAS V/S. RANCHHODLAL GOVINDLAL AND ANR. [VII G.L.R. 1039] and of M/S.KASTURBHAI RAMCHAND PANCHAL AND BROS. V/S. THE FIRM OF M/S.MOHANLAL NATHUBHAI AND ORS. [IX G.L.R. 729]. Mr.Pardiwala has also submitted that in view of the concurrent findings recorded by both the Courts below, this Court should not venture to reappreciate the evidence and to interfere with the findings recorded by both the Courts below. He has relied upon the judgments in the matters of PATEL VALMIK HIMATLAL & ORS. V/S. PATEL MOHANLAL MULJIBHAI [1999(1) G.L.R. 15] and of MODI BACHUBHAI SAKALCHAND V/S. MARIYAMBIBI NOORMOHMAD & ORS. [2001(3) G.L.R. 2019].

Mr.Mankad also has challenged the partial decree passed by the Court below. Mr.Mankad has submitted that the Court below has believed the plaintiffs' claim for bonafide personal requirement. Having accepted the case of the plaintiffs, the Court ought to have passed the decree for possession. Instead, the Court has failed to properly appreciate the question of hardship and has passed only a partial decree in favour of the plaintiffs. Mr.Mankad has submitted that the defendant is a person of fairly good means and has a residential house wherein there is sufficient accommodation for the defendant to run his clinic. The question of hardship, therefore, should have been decided in favour of the plaintiffs and the decree for possession ought to have been passed by the Courts below. In the alternative, he has submitted

that the partial decree passed by the Court below be maintained.

In the matter of Parsottamdas (supra), this Court has held that "the question of passing a decree in respect of a part of the premises falls for consideration under sub-section (2) of Section 13. Under the relevant provisions where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the court shall pass the decree in respect of such pat only. The question of hardship would fall for consideration only if the case with regard to reasonable and bonafide requirement is established. Until that case is established, one does not reach the stage of considering the question of comparative hardship. In the instant case, as held above, the reasonable and bonafide requirement having not been established, the further question with regard to the passing of a partial decree can not fall for consideration."

In the matter of Shankerlal (supra), this Court has held that "before any decree for partial eviction can be passed, the Court must satisfy itself that by passing such a decree, no hardship is going to be caused either to the landlord or to the tenant. Unless that satisfaction is reached, by the Court, the decree for partial possession can not be passed." Similar is the view expressed by this Court in the matter of M/s. Kasturbhai Ramchand Panchal & Bros. (supra).

In the matter of Patel Valmik Himatlal & Ors. (supra), the Hon'ble Supreme Court has held that "the powers under Sec.29(2) are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with the power to re-hear the matter and re-appreciate the evidence. The mere fact that a different view is possible on re-appreciation of evidence can not be a ground for exercise of the revisional jurisdiction." The said view is followed by this Court in the matter of Modi Bachubhai Sakalchand (supra).

The question is whether the Court below has recorded a finding in favour of the plaintiffs as far as their bonafide personal requirement is concerned. Though Mr.Mankad has vehemently argued that the Court below has recorded a finding in favour of the plaintiffs, I am unable to agree with him. The reading of the aforesaid

paragraphs 11, 12 and 13 of the judgment makes it abundantly clear that the Court below did not believe the plaintiffs' claim for bonafide personal requirement. The Court has specifically held that plaintiffs nos.1 and 2 and the family of the plaintiff no.2 can accommodate themselves on the ground floor of the building while plaintiff no.3 and his family can accommodate on the first floor of the building. In view of the concurrent finding recorded by both the Courts below, it is not possible for this Court to reappreciate the evidence and record its own finding contrary to the finding recorded by both the Courts below. Once the Court records finding against the plaintiffs, the question of considering passing of a decree for possession of part of the suit premises shall not arise. In the present case, the Court below has manifestly erred in considering the convenience of the plaintiffs inspite of rejecting the plea of bonafide personal requirement. As held by this Court in above referred judgments, question of such consideration would arise only in case the Court believes the plaintiffs' claim for bonafide personal requirement. The impugned judgment, in so far as it has passed partial decree in favour of the plaintiffs, requires to be set aside.

In the result, the Civil Revision Application No.1244/1999 is allowed. The judgment and order dated 21st June, 1999 of the learned Additional Assistant Judge, Valsad passed in Regular Civil Appeal No.102/1994 in so far as it directs the defendant to handover possession of part of the suit premises, is quashed and set aside. Rule is made absolute. Civil Revision Application No.1580/1999 is dismissed. Rule is discharged. The parties shall bear their own costs.

(Ms. R.M. Doshit, J.)

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